No. 175

In the Supreme Court of the United States

OCTOBER TERM, 1951

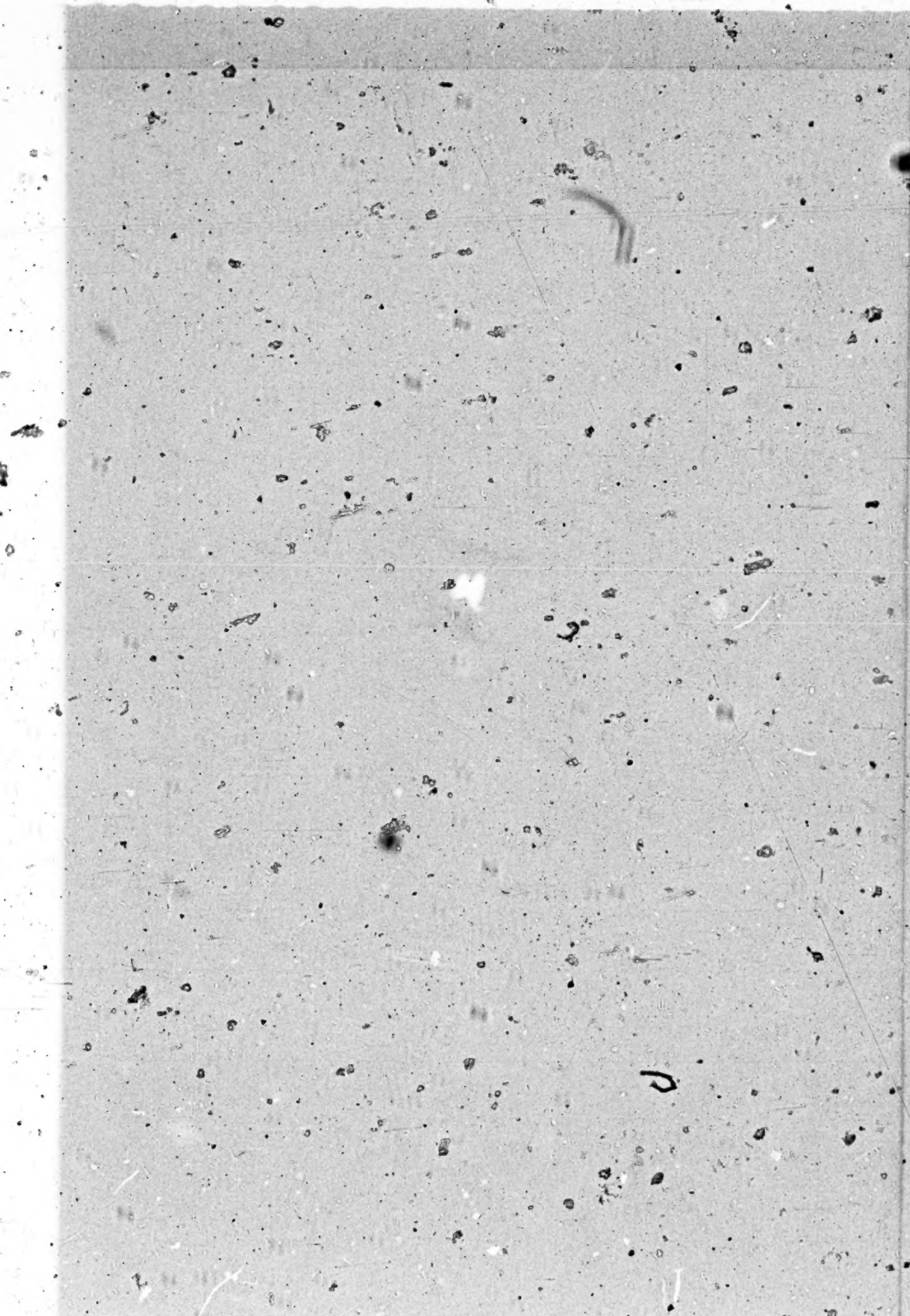
UEBERSEE FINANZ-KORPORATION, A.G., PETITIONER

v.

J. HOWARD MCGRATH, ATTORNEY GENERAL, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION TO TRANSFER FROM THE SUMMARY DOCKET TO THE APPELLATE DOCKET AND TO ALLOW ONE HOUR OF ARGUMENT TO EACH SIDE



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The Solicitor General, on behalf of respondent J. Howard McGrath, Attorney General, as successor to the Alien Property Custodian, respectfully moves that the above-entitled case be transferred from the summary docket to the appellate docket and that one hour of argument be allowed to each side.

1. The petition, which was granted without limitation, raises a number of contentions relating to the question whether petitioner, a neutral corporation, was enemy tainted and hence disqualified from recovering property vested pursuant to the Trading with the Enemy Act. The present case is the only one which has reached this Court after trial of the facts on questions of enemy taint. The trial was a lengthy one, resulting a record totalling over 2,000 printed pages. The evidence at the trial covered a series of transactions and relationships involving persons and properties in five different countries and extending over more than 20 years.

The various legal contentions advanced by petitioner as to the scope of the doctrine of taint are necessarily to be decided on the whole record, not on a hypothetical statement of facts (see Pet. p. 2); their decision requires consideration of the incidents of ownership possessed by and the control exercised by the enemy Opel parents over the petitioner, the relationships between those parents and their assertedly neutral son, and a variety of other circumstances. It requires an understanding, for example, of the nature and purposes of the 1931 transaction resulting in the execution of an instrument of gift from the Opel parents to their son, the legal incidents under German law of the usufruct reserved to the Opel parents by that instrument, the practical control exercised by Hans Frankenberg, as Wilhelm von Opel's agent, over

petitioner's affairs and over Fritz von Opel, and the function which all of these arrangements served for Wilhelm von Opel in view of the existing German foreign exchange regulations. Moreover, even a brief exposition of the underlying facts is rendered difficult by the circumstance that, despite the clarity and explicitness of the 56 findings of fact made by the District Court, the parties have repeatedly differed in important respects as to the interpretation of and inferences to be drawn from those findings. These differences are also reflected in petitioner's specification of 12 errors to be urged (Pet. pp. 9-10), many of which are essentially factual in nature.

A further question sought to be raised is whether, assuming petitioner to be enemy tainted, recovery can be awarded in this action of a proportionate part of the properties in suit, representing an asserted fractional interest of a neutral stockholder. This question may involve an issue which will also be presented in *Kaufman* v. *Societe Internationale, etc., and J. Howard McGrath*, No. 172. There are, however, a number of other issues on this aspect of the case which are not presented by *Kaufman*, and which in our view are decisive of this case. These include whether the District Court abused its discretion in declining to consider the claim to a fractional interest as having been suggested for the first time during the closing arguments following a lengthy trial, whether there is in this action a proper party plaintiff to present

a claim to recovery of a fractional interest; and whether on the facts of this case there is any independent neutral interest to support such a fractional recovery.

This case may have been placed on the summary docket because of an apparent similarity to the *Kaufman* case. At most, however, the two cases may have but one point in common, and that is a point which, for a number of reasons, we believe this Court need never reach in the present case. It is, moreover, a point which the District Court expressly refused to consider and which the Court of Appeals did not think it necessary even to mention until its opinion on rehearing. In the event that full argument is permitted in this case it will be the Government's intention to devote almost its entire time to those issues raised on the present record which do not duplicate issues presented by the *Kaufman* case. We believe that a full hour's argument is needed for adequate presentation of those issues.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

NOVEMBER, 1951.

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